

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

.....X
JINGYUAN YANG and YAN LI individually and as parents
and natural guardians of S.Y., an infant,

Plaintiffs, COMPLAINT
Against

UNITED STATES OF AMERICA and
NEW YORK-PRESBYTERIAN HEALTHCARE SYSTEM, INC.,
d/b/a NEW YORK-PRESBYTERIAN LOWER MANHATTAN
HOSPITAL and NEW YORK-PRESBYTERIAN WEILL CORNELL
MEDICAL CENTER,

Defendants.

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Plaintiffs, by their attorneys, the JONATHAN C. REITER LAW FIRM, PLLC,
complaining of the defendants, respectfully allege as follows:

JURISDICTION

1. Jurisdiction exists pursuant to 28 U.S.C. §§1331, 1346 and 1332. The plaintiff further invokes the pendent jurisdiction of this court over claims arising under New York State law.

2. Prior to the filing of this action, on or about October 16, 2020, the plaintiff timely made and presented to the United States Department of Health and Human Services a Claim for Damage, Injury or Death, as required under the Federal Tort Claims Act of the United States of America. The defendant United States of America, Department of Health and Human Services, has failed, neglected and refused to pay, settle, compromise or adjust the claim of the plaintiffs. The plaintiffs have duly complied with all of the conditions precedent to the commencement of this action.

3. The amount in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs.

VENUE

4. Venue is founded upon 28 U.S.C. §1391(b) and (e).

PARTIES

5. Plaintiff JINGYUAN YANG is the father of the infant plaintiff S.Y. Plaintiff YAN LI is the mother of the infant plaintiff S.Y. Plaintiffs are citizens of the State of New Jersey, residing at 201 Marin Boulevard #402, Jersey City, New Jersey 07302.

6. Upon information and belief, at all times hereinafter mentioned and at the time of the occurrences herein, Charles B. Wang Community Health Center, Inc. (“CBWCHC”) was and is a domestic not-for profit corporation and a Federally Qualified Health Center under section 330 of the Public Health Services Act, 42 USC § 254b; Social Security Act 1905(l)(2)(B) with its principal place of business at 268 Canal Street, New York, New York 10013.

7. Upon information and belief, defendant NEW YORK-PRESBYTERIAN HEALTHCARE SYSTEM, INC. is a domestic not-for-profit corporation having its principal place of business at 466 Lexington Avenue, New York, NY 10017 and was doing business *inter alia* as NEW YORK-PRESBYTERIAN LOWER MANHATTAN HOSPITAL, located at 170 William Street New York, New York 10038 and NEW YORK-PRESBYTERIAN/WEILL CORNELL MEDICAL CENTER located at 525 East 68th Street, New York, New York 10065.

AS AND FOR A FIRST CAUSE OF ACTION ON BEHALF OF S.Y. AGAINST THE UNITED STATES OF AMERICA

8. Upon information and belief, on or about April 14, 2019, CBWCHC, its agents, servants and employees had undertaken to render obstetrical and gynecological diagnosis, treatment,

advice, care and services to plaintiff YAN LI including pre-natal care, labor and delivery and post-natal care.

9. CBWCHC, its agents, servants and employees rendered prenatal care to plaintiff YAN LI from on or about April 14, 2019, at various times and intervals at its offices at 268 Canal Street, New York, New York 10013 up to and including December 5, 2019.

10. On or about December 5, 2019, plaintiff YAN LI was admitted to New York-Presbyterian Lower Manhattan Hospital for induction of labor and delivery of her baby.

11. That upon information and belief, while at New York-Presbyterian Lower Manhattan Hospital for the delivery of her baby, plaintiff YAN LI was attended by physicians, nurses, midwife(s), physician's assistants and others who were employed by CBWCHC and/or defendant NEW YORK-PRESBYTERIAN HEALTHCARE SYSTEM, INC., and/or any of its member hospitals and/or medical practices.

12. Upon information and belief, on or about December 2019, the infant plaintiff S.Y. was delivered by Caesarean section performed by Sandy Lau Bui, D.O. and assisted by Mingming Chan, P.A.

13. Upon information and belief, the infant plaintiff S.Y. was born in a flaccid, unresponsive state, with no respiratory effort and no detectable heart rate, with recorded APGAR scores of 0, 1 and 4 at one, five and ten minutes respectively.

14. The infant plaintiff S.Y. was transferred to New York-Presbyterian/Weill Cornell Medical Center on or about December 6, 2019 and remained there until on or about March 5, 2020 being treated for multiple serious injuries and conditions including but not limited to respiratory failure, paralysis of right hemi-diaphragm, right phrenic nerve palsy, right brachial plexopathy, hypotonia, encephalopathy and other injuries. Diaphragmatic plication surgery was

performed on January 22, 2020, tracheostomy on February 11, 2020 and gastrostomy tube on February 18, 2020.

15. On or about March 5, 2020, the infant plaintiff S.Y. was transferred to Children's Specialized Hospital located at 150 New Providence Road, Mountainside, New Jersey 07092 and remained there until June 25, 2020, being treated for multiple injuries and conditions as set forth above and with continued tracheostomy, ventilator and gastrostomy dependence, which is expected to continue in the future.

16. That the defendant UNITED STATES OF AMERICA, its agents servants and employees including CBWCHC and its agents, servants and employees, including but not limited to Sandy Lau Bui, D.O., Pearl Tung, C.N.M., Yuhan Kim, C.N.M., Amy Frassetto, P.A., Taylor Reardon, P.A., Mingming Chan, P.A., Alan W. Ho, M.D. and others not presently identified, was negligent and departed from accepted standards of care in rendering negligent pre-natal care, in rendering negligent care during labor and delivery of the infant plaintiff, in failing to properly diagnose, treat and evaluate the plaintiff Yan Li, in negligently failing to timely diagnose and treat oligohydramnios, in negligently failing to timely monitor and examine Yan Li, in failing to perform timely ultrasounds; in negligently delaying induction of labor, in negligently managing induction of labor, in negligently failing to timely diagnose and treat signs and symptoms of fetal distress, in negligently managing labor, in failing to timely and properly attend Yan Li in the hospital, in negligently failing to timely perform Caesarean section and in causing unreasonable delay in performing Caesarean section, in performing Caesarean section in a negligent manner, in negligently and unnecessarily causing injury to the infant plaintiff during Caesarean section, in negligently causing the infant plaintiff to sustain plexopathy with phrenic nerve injury and paralysis of the right hemidiaphragm, brain damage and other serious permanent injuries, in

failing to obtain appropriate and necessary laboratory studies and tests, in failing to order and perform necessary and appropriate imaging and radiological studies; in prescribing and administering medications that were contra-indicated or not indicated; in prescribing and administering medications in improper dosages and/or for improper periods of time; in failing to obtain necessary consultations with specialists, in failing to provide proper supervision and in otherwise being negligent and committing malpractice.

17. Upon information and belief, in rendering diagnosis, treatment, advice, care, surgery and services to plaintiff YAN LI and the infant plaintiff S.Y, Sandy Lau Bui, D.O., Pearl Tung, C.N.M., Yuhan Kim, C.N.M., Amy Frassetto, P.A., Taylor Reardon, P.A., Mingming Chan, P.A., Alan W. Ho, M.D. and others not presently identified, were acting in the course and scope of their employment by CBWCHC and the defendant UNITED STATES OF AMERICA by operation of law.

18. That by reason of the foregoing, the infant plaintiff S.Y. was proximately caused to sustain severe and permanent personal injuries, including but not limited to plexopathy with phrenic nerve injury and paralysis of right hemidiaphragm with respiratory insufficiency, respiratory failure, collapsed lung, pneumothorax, need for chest tube placement, plication surgery, tracheostomy, prolonged ventilator support and lung damage, inability to breathe independently, Erb's palsy, wrist deformity, hypotonia, brain damage, cognitive deficits, gastrostomy and other injuries not yet determinable, pain, suffering loss of enjoyment of life, past and future medical, nursing, therapy, hospital and custodial expenses, future impairment of earning capacity and other economic damages.

19. That by reason of the foregoing, plaintiff(s) demand all damages permitted by law in the sum of TWO HUNDRED FORTY-FIVE MILLION (\$245,000,000.00) DOLLARS.

AS AND FOR A SECOND CAUSE OF ACTION ON BEHALF OF JINGYUAN YANG AGAINST THE UNITED STATES OF AMERICA FOR LOSS OF SERVICES OF S.Y.

20. Plaintiffs repeat and reiterate all of the previous allegations of the complaint with the same force and effect as if fully set forth again at length.

21. By reason of the foregoing negligence and malpractice of the defendant, the UNITED STATES OF AMERICA, the plaintiff JINGYUAN YANG has been deprived of the services and society of his son, the infant plaintiff S.Y. and has incurred and/or will incur expenses on his behalf for medical, hospital, nursing, custodial and other expenses, and has suffered economic and pecuniary damages.

22. By reason of the foregoing, plaintiff JINGYUAN YANG demands all damages permitted by law in the amount of TWO MILLION FIVE HUNDRED THOUSAND (\$2,500,000.00) DOLLARS.

AS AND FOR A THIRD CAUSE OF ACTION ON BEHALF OF YAN LI AGAINST THE UNITED STATES OF AMERICA FOR LOSS OF SERVICES OF S.Y.

23. Plaintiffs repeat and reiterate all of the previous allegations of the complaint with the same force and effect as if fully set forth again at length.

24. By reason of the foregoing negligence and malpractice of the defendant, the UNITED STATES OF AMERICA, the plaintiff YAN LI has been deprived of the services and society of her son, the infant plaintiff S.Y. and has incurred and/or will incur expenses on his behalf for medical, hospital, nursing, custodial and other expenses, and has suffered economic and pecuniary damages.

25. By reason of the foregoing, plaintiff YAN LI demands all damages permitted by law in the amount of TWO MILLION FIVE-HUNDRED THOUSAND (\$2,500,000.00) DOLLARS.

AS AND FOR A FOURTH CAUSE OF ACTION ON BEHALF OF S.Y. AGAINST NEW YORK-PRESBYTERIAN HEALTHCARE SYSTEM, INC.

26. Plaintiffs repeat and reiterate all of the previous allegations of the complaint with the same force and effect as if fully set forth again at length.

27. Upon information and belief, the defendant NEW YORK PRESBYTERIAN HEALTHCARE SYSTEM, INC., and/or NEW YORK-PRESBYTERIAN LOWER MANHATTAN HOSPITAL and/or NEW YORK-PRESBYTERIAN WEILL CORNELL MEDICAL CENTER provided physicians, physician assistants, nurse practitioners, nurse midwives, and other staff to CBWCHC, including but not limited to Sandy Lau Bui, D.O., Pearl Tung, C.N.M., Yuhan Kim, C.N.M., Amy Frassetto, P.A., Taylor Reardon, P.A., Mingming Chan, P.A., Alan W. Ho, M.D.

28. Upon information and belief, in rendering diagnosis, treatment, advice, care, surgery and services to plaintiff YAN LI and the infant plaintiff S.Y., the aforementioned individuals were acting in the course and scope of their employment by NEW YORK PRESBYTERIAN HEALTHCARE SYSTEM, INC., and/or NEW YORK-PRESBYTERIAN LOWER MANHATTAN HOSPITAL and/or NEW YORK-PRESBYTERIAN WEILL CORNELL MEDICAL CENTER.

29. That the defendant NEW YORK-PRESBYTERIAN HEALTHCARE SYSTEM, INC., its agents servants and employees including but not limited to Sandy Lau Bui, D.O., Pearl Tung, C.N.M., Yuhan Kim, C.N.M., Amy Frassetto, P.A., Taylor Reardon, P.A., Mingming Chan, P.A., Alan W. Ho, M.D. and others not presently identified, was negligent and departed from accepted standards of care in rendering negligent pre-natal care, in rendering negligent care during labor and delivery of the infant plaintiff, in failing to properly diagnose, treat and evaluate the plaintiff Yan Li, in negligently failing to timely diagnose and treat oligohydramnios, in

negligently failing to timely monitor and examine Yan Li, in failing to perform timely ultrasounds; in negligently delaying induction of labor, in negligently managing induction of labor, in negligently failing to timely diagnose and treat signs and symptoms of fetal distress, in negligently managing labor, in failing to timely and properly attend the Yan Li in the hospital, in negligently failing to timely perform Caesarean section and in causing unreasonable delay in performing Caesarean section, in performing Caesarean section in a negligent manner, in negligently and unnecessarily causing injury to the infant plaintiff during Caesarean section, in negligently causing the infant plaintiff to sustain plexopathy with phrenic nerve injury and paralysis of the right hemidiaphragm, brain damage and other serious permanent injuries, in failing to obtain appropriate and necessary laboratory studies and tests, in failing to order and perform necessary and appropriate imaging and radiological studies; in prescribing and administering medications that were contra-indicated or not indicated; in prescribing and administering medications in improper dosages and/or for improper periods of time; in failing to obtain necessary consultations with specialists, in failing to provide proper supervision and in otherwise being negligent and committing malpractice.

30. That by reason of the foregoing, the infant plaintiff S.Y. was proximately caused to sustain severe and permanent personal injuries, including but not limited to plexopathy with phrenic nerve injury and paralysis of right hemidiaphragm with respiratory insufficiency, respiratory failure, collapsed lung, pneumothorax, need for chest tube placement, plication surgery, tracheostomy, prolonged ventilator support and lung damage, inability to breathe independently, Erb's palsy, wrist deformity, hypotonia, brain damage, cognitive deficits, gastrostomy and other injuries not yet determinable, pain, suffering loss of enjoyment of life,

past and future medical, nursing, therapy, hospital and custodial expenses, future impairment of earning capacity and other economic damages.

31. That by reason of the foregoing, plaintiff(s) demand all damages permitted by law in the sum of TWO HUNDRED FORTY-FIVE MILLION (\$245,000,000.00) DOLLARS.

**AS AND FOR A FIFTH CAUSE OF ACTION ON BEHALF OF JINGYUAN YANG
AGAINST NEW YORK-PRESBYTERIAN HEALTHCARE SYSTEM, INC.
FOR LOSS OF SERVICES OF S.Y.**

32. Plaintiffs repeat and reiterate all of the previous allegations of the complaint with the same force and effect as if fully set forth again at length.

33. By reason of the foregoing negligence and malpractice of the defendant, the NEW YORK-PRESBYTERIAN HEALTHCARE SYSTEM, INC., its agents servants and employees, the plaintiff JINGYUAN YANG has been deprived of the services and society of his son, the infant plaintiff S.Y. and has incurred and/or will incur expenses on his behalf for medical, hospital, nursing, custodial and other expenses, and has suffered economic and pecuniary damages.

34. By reason of the foregoing, plaintiff JINGYUAN YANG demands all damages permitted by law in the amount of TWO MILLION FIVE HUNDRED THOUSAND (\$2,500,000.00) DOLLARS.

**AS AND FOR A SIXTH CAUSE OF ACTION ON BEHALF OF YAN LI AGAINST NEW
YORK-PRESBYTERIAN HEALTHCARE SYSTEM, INC.
FOR LOSS OF SERVICES OF S.Y.**

35. Plaintiffs repeat and reiterate all of the previous allegations of the complaint with the same force and effect as if fully set forth again at length.

36. By reason of the foregoing negligence and malpractice of the defendant, the NEW YORK-PRESBYTERIAN HEALTHCARE SYSTEM, INC., its agents, servants and employees,

the plaintiff YAN LI has been deprived of the services and society of her son, the infant plaintiff S.Y. and has incurred and/or will incur expenses on his behalf for medical, hospital, nursing, custodial and other expenses, and has suffered economic and pecuniary damages.

37. By reason of the foregoing, plaintiff YAN LI demands all damages permitted by law in the amount of TWO MILLION FIVE-HUNDRED THOUSAND (\$2,500,000.00) DOLLARS.

JURY TRIAL DEMAND

Plaintiffs demand trial by jury of all causes of action in which trial by jury is permitted by law.

WHEREFORE, plaintiffs JINGYUAN YANG and YAN LI, individually and as parents and natural guardians of S.Y., an infant, demand judgment on behalf of the infant S.Y. against the UNITED STATES OF AMERICA in the sum of \$245,000,000.00 on the First Cause of Action, on behalf of JINGYUAN YANG, individually in the sum of \$2,500,000.00 on the Second Cause of Action, and on behalf of YAN LI, individually in the sum of \$2,500,000.00 on the Third Cause of Action, and demand judgment on behalf of the infant S.Y. against NEW YORK PRESBYTERIAN HEALTHCARE SYSTEM, INC., d/b/a NEW YORK-PRESBYTERIAN LOWER MANHATTAN HOSPITAL and NEW YORK-PRESBYTERIAN WEILL CORNELL MEDICAL CENTER in the sum of \$245,000,000.00 on the Fourth Cause of Action, and on behalf of JINGYUAN YANG, individually in the sum of \$2,500,000.00 on the Fifth Cause of Action, and on behalf of YAN LI, individually in the sum of \$2,500,000.00 on the Sixth Cause of Action, together with interest, costs and disbursements.

JONATHAN C. REITER LAW FIRM, PLLC

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